

Records Management

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Appendix

Records Management

8-01 MAINTAINING RECORDS

Every probation department should have a program for managing the creation, maintenance, and disposition of all relevant court records. Any records management program instituted should consider the handling of a case file from initiation to eventual destruction. See Volume 2, Section 8 of the Michigan Court Administration Reference Guide and the Michigan Trial Court Case File Management Standards for more details on records management.

A. Authority

MCR 8.119 governs records and entries kept by the district court clerk, as well as by a district court probation department.

B. Responsibility

The district court probation department shall keep in a probation case file, in such a form as may be prescribed by the district court, a copy of a probation order, as well as any other necessary forms or documents that may be relevant to the probation order.

C. Types of Records and Contents of Files

Probation case files may include the following items: probation order, community service referral forms, monthly report forms, relevant reports from substance abuse agencies, psychological or psychiatric reports, sex offender registration forms, and notes relevant to the probationer's standing and progress, among others.

8-02 RIGHT TO ACCESS RECORDS

A. Authority and Procedure for Accessing Information

Generally, unless access to a file is restricted by statute, court rule, or an order sealing records according to MCR 8.119(F), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in MCR 8.119(E)(2) and (E)(3). Every court shall adopt an administrative order to make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions. [MCR 8.119(E)]

Access to an entire file may be restricted by court rule, statute, or a judicial order under certain circumstances. Case folders and related records (register of actions, indexes, court reporter notes, audio or video recordings, calendars, and public calendar, etc.) of certain types should be marked confidential. See the table entitled "Statutory-Based and Rule-Based Limited Access Court Records" in the **Appendix** of the Michigan Trial Court Case File Management Standards for a list of restricted access records.

The file area containing restricted-access files that are frequently accessed should be away from the area accessible to the general public and unauthorized personnel and should be supervised. Each folder should be clearly identified to warn court personnel that access to the folder is restricted. The procedures and policies for restricted-access files should be explicitly stated in the court rules or clerk of the court's manual and periodically reviewed with all staff who come into contact with such files. The clerk of the court must also take precautions to maintain the confidentiality of pieces of information in restricted-access case files and other court records. This information includes confidential information regulated by Michigan or federal statute, federal regulation, or Michigan court rule.

When access to any court record or probation case file is restricted by statute, court rule, or order, the trial court should clearly mark the record "NONPUBLIC RECORD".

For additional information on records management, see Michigan Court Administration Reference Guide, Volume 2, Section 8-03, subchapter 1.3 of this Section, and Michigan Trial Court Case File Management Standards.

B. Access to Nonpublic Records and Privileged Information

When a court has ordered, or has pending before it a request to order, a limitation on the access of the public to court proceedings or records of those proceedings that are otherwise public, any person may file a motion to set aside the order or an objection to entry of the proposed order. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting party may file an application for leave to appeal in the same manner as a party to the action. [MCR 8.116(D)]

When public inquiry is made about a record the access to which is restricted by court order, court personnel should admit that a record exists without specifying what the record is, should indicate that access to the record is restricted, and should refer the inquiring person to the procedure for access to these records in MCR 8.116(D). MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting party may file an application for leave to appeal in the same manner as a party to the action. [MCR 8.116(D)].

C. Disclosure of Probation Records, Reports, and Case Histories

MCL 791.229 clearly makes all circuit probation records and reports privileged and confidential. They are not open to public inspection; access is authorized only for judges, probation officers, the attorney general, auditor general, and law enforcement agencies. The overriding purpose is to protect the confidential relationship between the probation officer and defendant. There is no similar protection or requirement for district court probation in statute.

In *Howe v Detroit Free Press*, 440 Mich 203 (1992) the Supreme Court considered whether a district court probation record was privileged. The Court found that MCL 791.229 applied and held that the record was privileged (although the privilege was waived in the case before the Court). This case was decided after amendments to MCL 791.229 and involved a district court probation record created after the amendments. With this background the Supreme Court ruled that MCL 791.229 created a privilege and impliedly that the statute applied to district court probation records.

If a probation officer receives a subpoena for a probation record it is proper for the officer to attend the hearing with the record requested and advise the presiding officer that the record is protected under MCL 791.229 and *Howe*.

The privilege protects the probationer, to the exclusion of others. A waiver signed by the defendant would allow a probation record to be released. Prior to releasing a probation record the probation officer should receive a copy of the signed waiver.

The privileged status of probation records may be compromised if such records are contained within the case file under the custody of the clerk of the court. It is recommended that with the exception of the probation order, any amended order, and the order of discharge, all probation records be kept separately from the case file maintained by the clerk. Requests other than a subpoena for access to probation records that may be in the custody of the court clerk must follow the procedures outlined in MCR 8.119(F).

MCL 28.214 creates misdemeanor and felony penalties for misuse of LEIN by way of improper dissemination of information obtained via LEIN. Disclosure of conviction information obtained via LEIN to non-criminal justice agencies or persons is prohibited. Defense attorneys are not criminal justice agency employees.

D. Freedom of Information Act

Probation records or court records are often requested by an individual citing the Freedom of Information Act. [MCL 15.231 et seq.] The judiciary is specifically excluded from the definition of public bodies subject to the Act. Several Michigan Court Rules cover public access to probation files and court records. Specifically, MCR 8.119(E) permits any person to inspect pleadings and other documents in the District Court Clerk's office and obtain copies.

E. Probation Officer Testifying in Court

See Section 1-03.

8-03 RETAINING AND DESTROYING RECORDS

A. Maintenance Standards and Regulations

Records may not be disposed of, mutilated, or destroyed except as allowed by statute or court rule. Minimum record retention schedules for use by the trial courts have been approved by the State Administrative Board. [MCL 399.5, MCL 600.2137, MCL 691.1101, MCL 600.8344, MCL 720.551 MCR 5.925]

B. Records Retention and Destruction Schedule

<u>Records Title and Description</u>	<u>Minimum Retention Period</u>
1. Probation files and presentence reports*	3 years after discharge from probation
2. Accounting records including books, ledgers, journals, etc.	6 years
3. Bank statements, reconciliations, deposit slips, etc.	6 years
4. Check books and canceled checks	6 years
5. Requisitions - all categories	6 years
6. Vouchers - all categories	6 years
7. Personnel files	6 years after employment is discontinued
8. Personnel - job applications (hired or not)	3 years after filling the position
9. Statistical reports and general correspondence	1 year

The approved disposal methods of records are transfer, shredding, and burning.

* Probation Case Files may include the following items: Probation Order, Report of Substance Abuse Assessment, Monthly Report Forms, Relevant Reports from Substance Abuse Agencies, Psychological or Psychiatric Reports and Notes relevant to the Probationer's standing and progress.

[excerpt from Records Retention and Disposal Schedule 16]

Where applicable, the computer records are the work products of any district court probation department and are to be treated in the same manner as other applicable items or records on the retention schedule.

D. Forms

The State Court Administrator, under the Supreme Court's supervision and direction, shall approve and publish forms as required by the Michigan Court Rules, and such other recommended forms as the administrator deems advisable [MCR 8.103(9)].

While certain statutes and court rules require the State Court Administrator to approve forms for use in specific proceedings, with a few exceptions and in the probate court, the use of SCAO approved forms is not mandatory.

See also Michigan Court Administration Reference Guide, Records and Information Management, Sections 8-07-01 through 8-07-07.

8-04 MANAGEMENT REPORTS

A. Authority and Responsibility

While there is no specific authority which requires a probation department to collect, maintain and analyze statistical data regarding the preparation of management reports, there is, at least, an implied responsibility for this function under duties and responsibilities of district court probation departments.

Under MCL 600.8314, a district court probation officer, under the general direction of the chief judge, judge or court administrator, shall prepare informational and demographic reports as they may be needed and requested. Under this specific authority there is also an implied aspect of cooperation between a district court probation department and other integral members of the Michigan Criminal Justice System.

8-05 SETTING ASIDE CONVICTION

A. Authority

MCL 780.621 governs the procedures used to set aside convictions. Only certain convictions may be set aside; the restrictions are specified on the application (SCAO Approved Forms MC 227). A conviction cannot be set aside if: 1) a person has been convicted of more than one criminal offense; or 2) the conviction was a traffic offense or a non-traffic offense reportable to the Secretary of State; or 3) the conviction was for a felony or an attempt to commit a felony for which the maximum punishment is life imprisonment; or 4) the conviction was for a violation or attempted violation of criminal sexual conduct under MCL 750.520c, .520d, or .520g. It must also be at least five years since the sentence was imposed or a term of imprisonment was completed before an application can be submitted. After an order setting aside conviction is entered and submitted to the Michigan State Police, Criminal Justice Information Center, the record will be maintained as a non-public record.

B. Forms

Application to Set Aside Conviction (MC 227) and Order on Application to Set Aside Conviction (MC 228).

8-06 CRIMINAL RECORDS REPORTING

A. Authority

The Criminal Justice Information Center of the Department of State Police is the state central repository for collecting and filing criminal history records. Local law enforcement agencies are required to take the fingerprints of any individual arrested for a felony or for a misdemeanor with a maximum penalty exceeding 92 days imprisonment or a fine of \$1000 or more. Courts have an obligation to review these criminal filings at arraignment and before sentencing to ensure that the individuals finger prints have been taken and to report the criminal disposition to the Criminal Justice Information Center.

Law enforcement agencies and courts are required to process those criminal records which are submitted to the Criminal Justice Information Center as specified in MCL 28.241-28.247, MCL 764.29 and MCL 769.16a.

B. Forms

The district court probation department will be involved in the criminal records reporting process to varying degrees as prescribed by the district court. Forms that a probation department will most likely complete are the Order of Probation (DC 243) and Motion and Order For Discharge From Probation (MC 245).

8-07 DESTRUCTION OF FINGERPRINTS

A. Authority

If a person is found not guilty of an offense, the arrest card and fingerprints of the accused shall be destroyed by the local arresting agency and the Criminal Justice Information Center of the Michigan State Police within 60 days. However, there are two provisions restricting the destruction of fingerprints: 1) the offense or attempted offense was a violation with or against a child under 16 years of age, criminal sexual conduct in any degree, rape, sodomy, gross indecency, indecent liberties, or child abusive commercial activities; or 2) the person has a prior conviction (except a misdemeanor traffic offense). [MCL 28.243(5)]

B. Forms

If the destruction of fingerprints and related information is not restricted, and the accused wants to ensure that the local arresting agency has destroyed them as well, the accused may obtain an order from the court having jurisdiction over the case which requires the local arresting agency to destroy the fingerprints and arrest card and to provide certification of that fact to the accused (see SCAO Approved Forms MC 235).

The forms that will result in destruction of the fingerprint and arrest information, if eligible, are Motion/Order of Nolle Prosequi (MC 263), Order of Acquittal/Dismissal (MC 262), and Commitment Order Not Guilty By Reason Of Insanity (MC 207). The form used to order the local arresting agency to destroy the fingerprints and arrest card is the Motion and Order for Destruction of Fingerprints and Arrest Card (MC 235).

APPENDIX 8

Commitment Order, Not Guilty by Reason of Insanity (MC 207)

Application to Set Aside Conviction (MC 227)

Order on Application to Set Aside Conviction (MC 228)

Motion and Order for the Destruction of
Fingerprints and Arrest Card (MC 235)

Order of Acquittal/Dismissal or Remand (MC 262)

Motion/Order of Nolle Prosequi (MC 263)